

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

**CIVIL ACTION NO.: HBC 110 of 2017**

**BETWEEN : SENIROQA COLATI  
PLAINTIFF**

**AND : REPUBLIC OF FIJI MILITARY FORCES  
FIRST DEFENDANT**

**: THE ATTORNEY GENERAL OF FIJI  
SECOND DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFF : Ms Fa [Fa & Company]**  
**FIRST DEFENDANT : Mr. Paka [Army Legal Services]**  
**SECOND DEFENDANT : Ms Nagilevu [Attorney-General's Chambers]**  
**RULING BY : Acting Master Ms Vandhana Lal**  
**DELIVERED ON : 22 April 2022**

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**INTERLOCUTORY RULING**

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**Application**

1. The First Defendant seeks orders for the Plaintiff's writ of summon and statement of claim to be struck out on the following grounds:
  - i. *The action is statute barred;*
  - ii. *It is frivolous or vexatious; and*
  - iii. *It is an abuse of the process of the court.*

2. The said application is made pursuant to Order 18 Rule 18 of the High Court Rules and is supported by an affidavit sworn by Colonel Kitione Ligani on 03<sup>rd</sup> July 2019.
3. An affidavit in opposition was filed by the Plaintiff on 19<sup>th</sup> September 2019.

**Plaintiff's Claim**

4. As at 29<sup>th</sup> September 1990, the Plaintiff was appointed as an officer of the First Defendant with rank of Lieutenant.
5. According to the Plaintiff, on or about 18<sup>th</sup> May 2010, he was sent on leave without pay by the First Defendant as a Board of Inquiry was set up by the First Defendant to investigate allegation against him for alleged unauthorized purchase of vehicle spare parts.
6. The Board of Inquiry completed its investigation on 02<sup>nd</sup> August 2011 and found that there was no evidence to support the allegation against the Plaintiff.
7. The recommendation was for the Plaintiff to be reinstated however the First Defendant failed to do so till to date.
8. The Plaintiff states he is without pay and benefits entitled to since 18<sup>th</sup> May 2010 and as a result of the First Defendant's unlawful action he and his family are enduring hardship, trauma, shame and embarrassment.
9. Hence, he seeks relief of for loss of salary and damages.

**The First Defendant's Contention**

10. The First Defendant's in their defence avert that the Plaintiff's claim is statute barred under the 2013 constitution.

11. On 25<sup>th</sup> August 2011 the then Commander of Republic Fiji Military Force had instructed to reinstate the Plaintiff on the condition he passes the required fitness level (RFL) and medical board.
12. The Plaintiff had failed to produce a RFL with the grading pass and was never reinstated.
13. The First Defendant's action in not reinstating the Plaintiff falls within the Immunity Provision under the 2013 Fiji Constitution where Republic of Fiji Military Force is granted absolute and unconditional immunity from any civil liability in any court.

#### **The Plaintiff's Opposition**

14. The Plaintiff denies that his claim is statute barred under the 2013 constitution, as the relevant provision applies to purported civilian takeover of the country on 19<sup>th</sup> May 2000.
15. The Plaintiff's claim deals with an internal disciplinary issue with the Republic of Fiji Military Force and the unlawful act of not reinstating the Plaintiff despite the recommendation of the Board of Inquiry.
16. The condition for reinstatement imposed was not a requirement for the Plaintiff's reinstatement.

#### **The Board of Inquiry report**

17. Paragraph 3, 4 and 5 of the said report reads:

3. *Captain COLATI has been suspended without pay from 18<sup>th</sup> May 2010. There are no evidence to support any fraudulent activity on the part of Captain COLATI.*
4. *There is insufficient evidence contained at Ref A that would result in any formal disciplinary action against Captain COLATI.*
5. *We are recommending that Captain COLATI be reinstated into the forces".*

**Section 157 of the Constitution of Fiji**

18. The said provision of the Constitution provides immunity as follows:

*“Absolute and unconditional immunity is irrevocably granted to any person (whether in their official or personal or individual capacity) holding the office of, or holding the office in, as the case may be –*

- (a) the President;*
- (b) the Prime Minister and Cabinet Ministers;*
- (c) Republic of Fiji Military Forces;*
- (d) Fiji Police Force;*
- (e) Fiji Correction Service;*
- (f) Judiciary;*
- (g) public service; and*
- (h) any public office*

*from any criminal prosecution and from any civil or other liability in any court, tribunal or commission, in any proceeding including any legal, military, disciplinary or professional proceedings and from any order or judgment of any court, tribunal or commission, as a result of any direct or indirect participation, appointment or involvement in the Government from 5<sup>th</sup> December 2006 to the date of the first sitting of the first Parliament elected after the commencement of this Constitution, provided however any such immunity shall not apply to any act or omission that constitutes an offence under section 133 to 146, 148 to 236, 288 to 351, 356 to 361, 364 to 374, and 377 to 386 of the Crimes Decreed 2009 (as prescribed in the Crimes Decree 2009 at the date of the commencement of this Constitution).”*

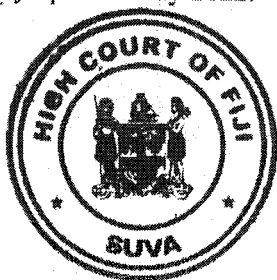
**Findings**


19. I can only agree with Plaintiff’s argument that the immunity granted under section 157 of the Fijian Constitution is a relation to *“result of any direct or indirect participation, appointment or involvement in the Government from 05<sup>th</sup> December 2006 to the date of the first sitting of the first Parliament elected after the commencement of this Constitution”*.

20. The Plaintiff was suspended from his position due to allegation of unauthorized purchase of vehicle spare parts. I do not find this had anything to do with participation appointment or involvement in the Government from 05<sup>th</sup> December 2006 till the first parliament sitting after the commencement of the Constitution.
21. The Plaintiff's claim is not subject to immunity granted under Section 157 of the Constitution. Neither is the claim frivolous or vexatious and an abuse of the process of the court.
22. There are issues for determination - was it a requirement for Plaintiff to undergo RFL for reinstatement?; Was the First Defendant's action of implying the condition for passing RFL and medical board lawful /unlawful?; What relief if any the Plaintiff is entitled to?.

#### Orders

23. Accordingly, the First Defendant's application of 03 July 2019 is dismissed with an order for cost in favor of the Plaintiff.
24. The First defendant is to pay the Plaintiff cost summarily assessed at \$850 and to be paid by 4pm 06 May 2022.



  
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Vandhana Lal [Ms]  
Acting Master  
At Suva.

22 April 2022

#### TO:

1. Suva High Court Civil Action No. HBC 110 of 2017;
2. Fa & Company, Solicitors for the Plaintiff;
3. Army Legal Services, In House Solicitors for the First Defendant;
4. Attorney-General's Chambers, Solicitors for the Second Defendant.